FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

BEFORE THE FEDERAL ELECTION COMMISSSION

In the Matter of	)	
	)	
Mick Cornett for Congress, and Mike McCarville, in his official capacity as Treasurer	)	MUR 5781
Travis A. Pickens, PC, Registered Agent for Mick Cornett Video Productions, Inc.	)	

STATEMENT OF REASONS OF COMMISSIONER HANS A. von SPAKOVSKY

(Commercial advertisements do not satisfy FECA's coordination provisions)

On June 28, 2007, the Commission voted 4-0 to dismiss this enforcement action as a matter of prosecutorial discretion pursuant to *Heckler v. Chaney*, 470 U.S. 821 (1985).[1] The Commission reasoned that the dollar value of any possible violation of the Act was relatively small, and any potential penalty would likely be significantly less than $1,000. Thus, the Commission determined that pursuing this matter would be an unwise use of resources. I support the decision to dismiss this matter, and cast my vote with my colleagues so that the Commission would have the necessary four votes to proceed affirmatively. I write separately to explain, however, that I believe the Commission should have dismissed the matter after finding no reason to believe that the Act was violated.

Background

Mick Cornett ran unsuccessfully for Congress in 2006. He is also the owner of Mick Cornett Video Productions, Inc. The complainant in this matter reported receiving a mailing from Mr. Cornett's video production company within 45 days of the Congressional primary election in which Mr. Cornett was a candidate. The multi-page mailing included photographs of Mr. Cornett. The question before the Commission was whether this mailing constituted a coordinated communication, in which Mick Cornett Video Productions, Inc., made an illegal, corporate in-kind contribution to Mr. Cornett's campaign.

[1] Chairman Lenhard, Vice Chairman Mason, and Commissioners von Spakovsky and Weintraub voted to dismiss. Commissioner Walther was absent

Analysis

The mailer at issue is a *bona fide* commercial advertisement. According to an affidavit Mr. Cornett provided to the Commission:

> The brochures were mailed sporadically over a 2-3 month period in the spring of 2006. We have had similar mailings in previous years. The brochures were sent to members of the Chamber of Commerce from a list of mailing labels purchased from the Chamber. The only consideration in determining whom to send a brochure to was the possibility of creating business for the video production company. There was absolutely no consideration given to political party affiliation.

Affidavit of Michael Earl Cornett, December 4, 2006. The brochures made no mention of any campaign or election. Thus, this matter involves nothing more than a long-established business advertising its services to members of the local business community, *i.e.*, people who might reasonably need video production services.

I have previously explained my view that a *bona fide* commercial advertisement is not made "for the purpose of influencing" a Federal election, and therefore, cannot be a coordinated communication under the Act. *See Statement of Reasons of Hans A. von Spakovsky in MUR 5410 (Oberweiss).*[2] I will not repeat those arguments here, but reiterate my opinion that the Commission must reconsider the scope of 11 CFR § 109.21(c)(4), particularly in light of the Supreme Court's recent decision in *Federal Election Commission v. Wisconsin Right to Life, Inc.*, 127 S.Ct. 2652, 2667 (2007).

Three days before the Commission voted in this matter, the Supreme Court upheld an as-applied challenge to the electioneering communication provision of the Bipartisan Campaign Reform Act, concluding that an advertisement cannot be regulated unless it is "susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate." The Commission's coordination regulation at 11 CFR § 109.21(c)(4), of course, is modeled on that very provision. As a result, 11 CFR § 109.21(c)(4) suffers from the same problems regarding overbroad applications because it does not include any limiting standard designed to exclude communications not made for a campaign- or election-related purpose.

The Commission should have dismissed this matter after finding that no violation of the Act occurred.

October 26, 2007

Hans A. von Spakovsky
Commissioner

[2] Available at http //www.fec.gov/members/von_Spakovsky/sor/sormur5410.pdf